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10/685,969	10/15/2003	Helmut Holzer	HOLZER-4	8634

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COLLAR & ROE, P.C.
1077 Northern Boulevard
Roslyn, NY 11576

EXAMINER

HESS, DANIEL A

ART UNIT	PAPER NUMBER
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2876

DATE MAILED: 01/06/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/685,969

Applicant(s)

HOLZER, HELMUT

Examiner

Daniel A Hess

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 October 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-58 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-18, 20-37, 39-41 and 45-58 is/are rejected.
- 7) ☒ Claim(s) 19, 38 and 42-44 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 October 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 10/15/2003.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Priority

Acknowledgement made of foreign priority in the instant case based on parent case Austria A 1562/2002 filed 10/15/2002. Certified priority papers have been received and placed in the file of record.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 3, 18, 23, 34, 41, 49, 52-58 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Re claim 3: A broad range or limitation together with a narrow range or limitation that falls within the broad range or limitation (in the same claim) is considered indefinite, since the resulting claim does not clearly set forth the metes and bounds of the patent protection desired. Note the explanation given by the Board of Patent Appeals and Interferences in *Ex parte Wu*, 10 USPQ2d 2031, 2033 (Bd. Pat. App. & Inter. 1989), as to where broad language is followed by "such as" and then narrow language. The Board stated that this can render a claim indefinite by raising a question or doubt as to whether the feature introduced by such language is (a) merely exemplary of the remainder of the claim, and therefore not required, or (b) a required feature of the claims. Note also, for example, the decisions of *Ex parte Steigewald*, 131 USPQ 74 (Bd. App. 1961); *Ex parte Hall*, 83 USPQ 38 (Bd. App. 1948); and *Ex parte Hasche*, 86 USPQ 481

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(Bd. App. 1949). In the present instance, claim 3 recites the broad recitation 3 m, and the claim also recites 1 m, which is the narrower statement of the range/limitation.

Regarding claim 18, the phrase "preferably" renders the claim indefinite because it is unclear whether the limitation(s) following the phrase are part of the claimed invention. See MPEP § 2173.05(d).

Claim 23 recites the limitation "the retaining mechanism" in the second line. There is insufficient antecedent basis for this limitation in the claim.

Regarding claims 34, 41 and 49, the phrase "for example" renders the claim indefinite because it is unclear whether the limitation(s) following the phrase are part of the claimed invention. See MPEP § 2173.05(d).

Re claim 52, upon which claims 53-58 depend, the number 30 is given, but specific units are not, rendering the claim indefinite.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.

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2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-17, 20-22, 24-25, 28, 31-36, 39-41, 45, 46, 48, 50-55 are rejected under 35

U.S.C. 103(a) as being unpatentable over Wan et al. (US PG Pub No. 2002/0121980) in view of Lippert (WO 01/82235).

Re claims 1 and 2:

The following are among the relevant teachings of Wan et al.; code transmitters are on individual articles of clothing, which are held in a wardrobe closet which acts as a separate control unit which determines, among other things, if particular items are correctly matched together. Also notable is especially figure 4, as well as figures 2 and 3.

[0008] In one embodiment, the advantages of the present invention are realized by a method of aiding a user in the selection of clothing. **The method includes the steps of automatically identifying clothing stored in a wardrobe closet and automatically identifying a first piece of clothing that has been removed from the wardrobe closet. Next, the wardrobe closet automatically determines a second piece of clothing that is appropriate to wear with the first piece of clothing.** An identification of the second piece of clothing is presented to the user.

[0036] FIG. 3 shows a schematic diagram of a wardrobe closet in accordance with one embodiment of the invention. **A radio frequency (RF) receiver 302 may scan RF tags or sensors that are embedded in clothing. Texas Instruments manufactures suitable receivers and tags under the brand name Tag-it.** The information obtained from radio frequency receiver 302 is transmitted to a serial port interface 304. Computer 204 stores information obtained from serial port interface 304 in a clothing section 308 of a memory 306. Of course, the present invention may be implemented with other tags or sensors such as Electronic Product Code (EPC) tags. Furthermore, RF receiver 302 may be replaced with a receiver operating at a different frequency, an optical reader or another reader capable of reading tags or sensors.

[0039] One skilled in the art will appreciate that the present invention can be implemented with several wardrobe closets. In one embodiment, each wardrobe closet has a separate RF receiver for identifying clothing and each of the RF receivers may be coupled to a common computer.

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Alternatively, each **wardrobe closet may include a computer** and the computers may be coupled together.

[0041] FIG. 4 illustrates a method that aids a user in the selection of clothing in accordance with one embodiment of the invention. First, in step 402, the wardrobe closet identifies clothing that has been removed by the user. RF receiver 302 (shown in FIG. 3) may scan the items of clothing stored in wardrobe closet 200. By determining the items present during two successive scans, the articles of clothing removed from the wardrobe closet may be identified.

[0042] In step 404, the wardrobe closet suggests a matching article of clothing. For example, when the user removes a shirt, the wardrobe closet may identify a matching pair of pants, shoes and a tie that form a coordinated outfit with the selected shirt. The suggestions provided by the wardrobe closet may be updated as a user removes additional articles of clothing. For example, after the user removes a shirt and a pair of pants, the wardrobe closet may determine which pair of shoes form a coordinated outfit with the selected shirt and pants. One skilled in the art will appreciate that computer 204 may include a software program for making such determinations based on factors such as style and color.

Wan et al. lacks in that the claimed articles are not specifically sporting articles.

Lippert teaches the use of RFID transponder-type systems on sporting equipment; in particular, skis.

In view of Lippert's teaching, it would have been obvious to one of ordinary skill in the art at the time the invention was made to include the old and well-known article tracking system with sporting equipment because one can thus be assisted by the wardrobe in matching *sporting* equipment.

Re claim 3: The range cited would be typical for RFID.

Re claim 4: The Texas Instruments 'Tag-it' tag described above [0036] is a transponder (See US PG Pub No. 2001/0000118, paragraph [0083]).

Re claim 5: The Texas Instruments 'Tag-it' tag described above [0036] receives power passively (see Johnson et al., US 6,554,188, column 16, line 60 to column 17, line 1).

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Re claim 6: Batteries are commonly employed in the art of transponders. The motive to include such would have been achieve greater signal strength by the transponder.

Re claim 7: A memory in the tags, either RAM or ROM, is inherent because the RFID tag must store ID.

Re claim 8: It is well-known in the art that an RFID tag such as Wan et al. contains a tiny chip and thus qualifies as a rudimentary computer.

Re claims 9-11: Lippert teaches that a tag may be on skis; for a snowboarder, equivalent locations could be on a snowboard, boot or binding.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to include a tag in these locations because at a typical ski resort a large proportion of the users are snowboarders rather than skiers.

Re claim 12: Active and passive RFID tags are both notoriously old and well-known in the art with trade-offs for each.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to include the old and well-known active tag because this can provide a stronger transmission signal and thus great transmission ranges.

Re claim 13: By claiming, "one-way or two-way," the applicant is effectively claiming "X or the opposite of X" which is inherently a true statement.

Re claim 14: The wardrobe has a computer 204, [0031; 0036]; it is software-driven [0045].

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use a commercially available computer because this would be less expensive.

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Re claim 15: See figure 2: The wardrobe computer 204 is connected a network 206.

Re claim 16: Wireless radio frequency networks are notoriously old and well-known in the art: see for example Jusa et al. (US 6,031,863).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to include the old and well-known wireless networks as taught by Jusa et al. and others because one can thus achieve long transmissions without the hassle of wires.

Re claim 17: Viewed broadly, virtually all computers are small enough to be held in the hands.

Re claim 20: As an RFID tag, “Tag-it” transponders have the recited features.

Re claim 21: Antennae are standard in all RFID systems.

Re claim 22: See [0039]: “identify clothing” – to do this, there must be a unique code. That the articles are sporting articles has been established by the combination.

Re claims 24 and 25: This is achieved indirectly: there is contained in each code transmitter of Wan et al. a code which links to a computer that can retain and display properties of an article.

Re claim 28: It is clear in Lippert that RFID tags are used for access to a ski resort.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to include the old and well-known tags for access to a ski resort as taught by Lippert in the teachings of Wan et al. because this helps to control unauthorized access.

Re claim 31: RFID tags identifying a person are notoriously old and have had early applications ranging from hospital settings to ticketing.

The motive could be, as in Lippert’s application, gaining access to a particular zone.

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Re claims 32 and 33: See discussion re claims 1 and 2 above.

Re claim 34: See discussion re claim 2 above, and see also figure 2 of Wan et al.

Re claim 35: An ID for an item can be considered a link to a description of that article stored in a wardrobe computer.

Re claim 36: Assigning of ID numbers in Wan et al. must occur at a particular point to avoid assigning duplicate ID numbers.

Re claim 39: See [0041] of Wan et al.: there are 'two successive scans' – this data is processed to identify an article of clothing selected.

Re claim 40: See discussion re claims 1 and 2 above.

Re claim 41: See discussion re claim 21 above.

Re claim 45: A listing which is updated of clothes held in the wardrobe is maintained in Wan et al.'s system.

Re claim 46: RFID tags have long been known in the art as a theft deterrent (US 5,959,530 is exemplary).

Re claim 48: Clearly in Wan et al., it clothes are to be washed, especially hot, it would make sense for electronic tags to be removable.

Re claim 50: As has been discussed above re claim 31, Lippert teaches access to sports facilities and provides motivation therefore.

Re claims 51, 52 and 58: See discussion re claim 2 above.

Re claim 53 and 54: See discussion re claim 3 above.

Re claim 55: Encryption and decryption of networked communications is common; one would have been motivated to do so include such to protect privacy generally.

Claims 26-27, 29, 30, 37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wan et al. as modified by Lippert as applied to claim 1 above, and further in view of Vock et al. (US PG Pub No. 2003/0163287).

Re claim 26: Wan et al. as modified by Lippert as applied to claim 1 above fails to teach that performance statistics are collected.

Vock et al. teaches [0235] speed data and other data pertaining to a skier can be collected by such a tag.

In view of Vock et al.'s teaching, it would have been obvious to one of ordinary skill in the art at the time the invention was made to include the old and well-known performance data collection system to provide notice if a skier is behaving recklessly.

Re claim 27: In Vock et al. [0235] a user may wear a receiver to receive performance data detected by MMD (a motion detecting sensor).

Re claims 29, 30: In Vock et al. [0235] an LED indicates excessive speed. As a matter of design choice and so the light can be easily seen, it may be desirable to put this LED on a pair of skis directly.

Re claim 37: See discussion re claim 26.

Claim 47 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wan et al. as modified by Lippert as applied to claim 1 above, and further in view of Godfrey et al. (US PG Pub No. 2003/0023337).

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Wan et al. as modified by Lippert as applied to claim 1 above fails to teach the recited insulation near the tag.

Godfrey et al. teaches [0080] insulating ferrite near the tag.

In view of Godfrey et al.'s teaching, it would have been obvious to one of ordinary skill in the art at the time the invention was made to include the old and well-known ferrite insulation near the tag because on sporting equipment (as per Lippert) a metal portions could interfere with signal transmission.

Allowable Subject Matter

Claims 19, 38 and 42-44 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Each of these claims contains subject matter which was is not taught or suggested by any prior art known to the Examiner.

Also, re claims 56 and 57, although they have been rejected under 35 USC 112, they may contain allowable subject matter, if all parent claims are additionally included.

Conclusion

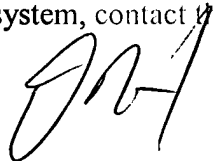
The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. "Magic Wardrobe: Situated Shopping from you own Bedroom" article by Wan in Personal Technologies (2000) 4: 234-237.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daniel A Hess whose telephone number is (571) 272-2392. The examiner can normally be reached on 8:00 AM - 5:00 PM M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael G Lee can be reached on (571) 272-2398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



DH

DANIEL STCYR
PRIMARY EXAMINER

